

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1803

Introduced by Assembly Member Mitchell

February 21, 2012

An act to ~~amend Section 14134 of~~ *add Section 14132.2 to* the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1803, as amended, Mitchell. Medi-Cal: ~~copayments.~~ *emergency medical conditions.*

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. ~~Existing law requires Medi-Cal beneficiaries to make set copayments for specified services and, upon federal approval, existing law revises these copayment rates and makes other related changes, as specified.~~ *Existing federal law requires a hospital to provide appropriate medical screening or treatment to determine whether an emergency medical condition exists if any individual comes to the emergency department and requires an examination or treatment for a medical condition, as specified.*

~~This bill would make technical, nonsubstantive changes to these provisions.~~

This bill would require the State Department of Health Care Services, or its contracting managed care health plans, if applicable, to reimburse providers for emergency services and care provided to a Medi-Cal

beneficiary, until the care results in stabilization of the beneficiary, except as provided.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14132.2 is added to the Welfare and
2 Institutions Code, to read:

3 14132.2. (a) The department, or its contracting managed care
4 health plan, if applicable, shall reimburse providers for emergency
5 services and care provided to a beneficiary, until the care results
6 in stabilization of the beneficiary, except as provided in subdivision
7 (b). As long as federal or state law requires that emergency
8 services and care be provided without first questioning the patient's
9 ability to pay, the department or its contracting managed care
10 health plan shall not require a provider to obtain authorization
11 prior to the provision of emergency services and care necessary
12 to stabilize the beneficiary's emergency medical condition.

13 (b) Payment for emergency services and care may be denied
14 only under the following circumstances:

15 (1) If the department or the contracting managed care health
16 plan reasonably determines that the emergency services and care
17 were never performed.

18 (2) If the beneficiary did not require emergency services and
19 care and the beneficiary reasonably should have known that an
20 emergency did not exist.

21 (c) The definitions set forth in Section 1317.1 of the Health and
22 Safety Code shall control the construction of this section.

23 ~~SECTION 1. Section 14134 of the Welfare and Institutions~~
24 ~~Code, as amended by Chapter 3 of the Statutes of 2011, is amended~~
25 ~~to read:~~

26 ~~14134. (a) Except for any prescription, refill, visit, service,~~
27 ~~device, or item for which the program's payment is ten dollars~~
28 ~~(\$10) or less, in which case no copayment shall be required, a~~
29 ~~recipient of services under this chapter shall be required to make~~
30 ~~copayments not to exceed the maximum permitted under federal~~
31 ~~regulations or federal waivers as follows:~~

32 ~~(1) Copayment of five dollars (\$5) shall be made for~~
33 ~~nonemergency services received in an emergency room. For the~~

1 purposes of this section, “nonemergency services” means any
2 services not required for the alleviation of severe pain or the
3 immediate diagnosis and treatment of severe medical conditions
4 which, if not immediately diagnosed and treated, would lead to
5 disability or death.

6 (2) Copayment of one dollar (\$1) shall be made for each drug
7 prescription or refill.

8 (3) Copayment of one dollar (\$1) shall be made for each visit
9 for services under subdivisions (a) and (h) of Section 14132.

10 (4) The copayment amounts set forth in paragraphs (1), (2), and
11 (3) may be collected and retained or waived by the provider.

12 (5) The department shall not reduce the reimbursement otherwise
13 due to providers as a result of the copayment. The copayment
14 amounts shall be in addition to any reimbursement otherwise due
15 the provider for services rendered under this program.

16 (6) This section does not apply to emergency services, family
17 planning services, or to any services received by:

18 (A) Any child in AFDC-Foster Care, as defined in Section
19 11400.

20 (B) Any person who is an inpatient in a health facility, as defined
21 in Section 1250 of the Health and Safety Code.

22 (C) Any person 18 years of age or under.

23 (D) Any woman receiving perinatal care.

24 (7) Paragraph (2) does not apply to any person 65 years of age
25 or over.

26 (8) A provider of service shall not deny care or services to an
27 individual solely because of that person’s inability to copay under
28 this section. An individual shall, however, remain liable to the
29 provider for any copayment amount owed.

30 (9) The department shall seek any federal waivers necessary to
31 implement this section. The provisions for which appropriate
32 federal waivers cannot be obtained shall not be implemented, but
33 provisions for which waivers are either obtained or found to be
34 unnecessary shall be unaffected by the inability to obtain federal
35 waivers for the other provisions.

36 (10) The director shall adopt any regulations necessary to
37 implement this section as emergency regulations in accordance
38 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
39 Division 3 of Title 2 of the Government Code. The adoption of
40 the regulations shall be deemed to be an emergency and necessary

1 for the immediate preservation of the public peace, health and
2 safety, or general welfare. The director shall transmit these
3 emergency regulations directly to the Secretary of State for filing
4 and the regulations shall become effective immediately upon filing.
5 Upon completion of the formal regulation adoption process and
6 prior to the expiration of the 120-day duration period of emergency
7 regulations, the director shall transmit directly to the Secretary of
8 State for filing the adopted regulations, the rulemaking file, and
9 the certification of compliance as required by subdivision (c) of
10 Section 11346.1 of the Government Code.

11 (b) This section shall become inoperative on the implementation
12 date for copayments stated in the declaration executed by the
13 director pursuant to Section 14134, as added by Section 101.5 of
14 the act that added this subdivision, and is repealed on January 1
15 of the following year.

16 SEC. 2. Section 14134 of the Welfare and Institutions Code,
17 as added by Chapter 3 of the Statutes of 2011, is amended to read:

18 14134. (a) The Legislature finds and declares all of the
19 following:

20 (1) Costs within the Medi-Cal program continue to grow due
21 to the rising cost of providing health care throughout the state and
22 also due to increases in enrollment, which are more pronounced
23 during difficult economic times.

24 (2) In order to minimize the need for drastically cutting
25 enrollment standards or benefits or imposing further reductions
26 on Medi-Cal providers during times of economic crisis, it is crucial
27 to find areas within the program where beneficiaries can share
28 responsibility for utilization of health care, whether they are
29 participating in the fee-for-service or the managed care model of
30 service delivery.

31 (3) The establishment of cost-sharing obligations within the
32 Medi-Cal program is complex and is subject to close supervision
33 by the United States Department of Health and Human Services.

34 (4) As the single state agency for Medicaid in California, the
35 State Department of Health Care Services has unique expertise
36 that can inform decisions that set or adjust cost-sharing
37 responsibilities for Medi-Cal beneficiaries receiving health care
38 services.

39 (b) Therefore, it is the intent of the Legislature for the
40 department to obtain federal approval to implement cost-sharing

1 for Medi-Cal beneficiaries and permit providers to require that
2 individuals meet their cost-sharing obligation prior to receiving
3 care or services.

4 (e) A Medi-Cal beneficiary shall be required to make
5 copayments as described in this section. These copayments
6 represent a contribution toward the rate of payment made to
7 providers of Medi-Cal services and shall be as follows:

8 (1) Copayment of up to fifty dollars (\$50) shall be made for
9 nonemergency services received in an emergency room. For the
10 purposes of this section, “nonemergency services” means services
11 not required for the alleviation of severe pain or the immediate
12 diagnosis and treatment of unforeseen medical conditions that, if
13 not immediately diagnosed and treated, would lead to disability
14 or death.

15 (2) Copayment of up to fifty dollars (\$50) shall be made for
16 emergency services received in an emergency room. For purposes
17 of this section, “emergency services” means services required for
18 the alleviation of severe pain or the immediate diagnosis and
19 treatment of unforeseen medical conditions that, if not immediately
20 diagnosed and treated, would lead to disability or death.

21 (3) Copayment of up to one hundred dollars (\$100) shall be
22 made for each hospital inpatient day, up to a maximum of two
23 hundred dollars (\$200) per admission.

24 (4) Copayment of up to three dollars (\$3) shall be made for each
25 preferred drug prescription or refill. A copayment of up to five
26 dollars (\$5) shall be made for each nonpreferred drug prescription
27 or refill. Except as provided in subdivision (g), “preferred drug”
28 shall have the same meaning as in Section 1916A of the Social
29 Security Act (42 U.S.C. Sec. 1396o-1).

30 (5) Copayment of up to five dollars (\$5) shall be made for each
31 visit for services under subdivision (a) of Section 14132 and for
32 dental services received on an outpatient basis provided as a
33 Medi-Cal benefit pursuant to this chapter or Chapter 8
34 (commencing with Section 14200), as applicable.

35 (6) This section does not apply to services provided pursuant
36 to subdivision (aa) of Section 14132.

37 (d) The copayments established pursuant to subdivision (e) shall
38 be set by the department, at the maximum amount provided for in
39 the applicable paragraph, except that each copayment amount shall

1 not exceed the maximum amount allowable pursuant to the state
2 plan amendments or other federal approvals.

3 ~~(e) The copayment amounts set forth in subdivision (e) may be~~
4 ~~collected and retained or waived by the provider. The department~~
5 ~~shall deduct the amount of the copayment from the payment the~~
6 ~~department makes to the provider whether retained, waived, or not~~
7 ~~collected by the provider.~~

8 ~~(f) Notwithstanding any other law, and only to the extent~~
9 ~~allowed pursuant to federal law, a provider of service has no~~
10 ~~obligation to provide services to a Medi-Cal beneficiary who does~~
11 ~~not, at the point of service, pay the copayment assessed pursuant~~
12 ~~to this section. If the provider provides services without collecting~~
13 ~~the copayment, and has not waived the copayment, the provider~~
14 ~~may hold the beneficiary liable for the copayment amount owed.~~

15 ~~(g) (1) Notwithstanding any other law, except as described in~~
16 ~~paragraph (2), this section shall apply to Medi-Cal beneficiaries~~
17 ~~enrolled in a health plan contracting with the department pursuant~~
18 ~~to this chapter or Chapter 8 (commencing with Section 14200),~~
19 ~~except for Senior Care Action Network or AIDS Healthcare~~
20 ~~Foundation. To the extent permitted by federal law and pursuant~~
21 ~~to any federal waivers or state plan adjustments obtained, a~~
22 ~~managed care health plan may establish a lower copayment or no~~
23 ~~copayment.~~

24 ~~(2) For the purpose of paragraph (4) of subdivision (e),~~
25 ~~copayments assessed against a beneficiary who receives Medi-Cal~~
26 ~~services through a health plan described in paragraph (1) shall be~~
27 ~~based on the plan's designation of a drug as preferred or~~
28 ~~nonpreferred.~~

29 ~~(3) To the extent provided by federal law, capitation payments~~
30 ~~shall be calculated on an actuarial basis as if copayments described~~
31 ~~in this section were collected.~~

32 ~~(h) This section shall be implemented only to the extent that~~
33 ~~federal financial participation is available. The department shall~~
34 ~~seek and obtain any federal waivers or state plan amendments~~
35 ~~necessary to implement this section. The provisions for which~~
36 ~~appropriate federal waivers or state plan amendments cannot be~~
37 ~~obtained shall not be implemented, but provisions for which~~
38 ~~waivers or state plan amendments are either obtained or found to~~
39 ~~be unnecessary shall be unaffected by the inability to obtain federal~~
40 ~~waivers or state plan amendments for the other provisions.~~

1 (i) ~~Notwithstanding Chapter 3.5 (commencing with Section~~
2 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code,~~
3 ~~the department may implement, interpret, or make specific this~~
4 ~~section by means of all-county letters, all-plan letters, provider~~
5 ~~bulletins, or similar instructions, without taking further regulatory~~
6 ~~actions.~~

7 (j) ~~(1) This section shall become operative on the date that the~~
8 ~~act adding this section is effective, but shall not be implemented~~
9 ~~until the date in the declaration executed by the director pursuant~~
10 ~~to paragraph (2). In no event shall the director set an~~
11 ~~implementation date prior to the date federal approval is received.~~

12 ~~(2) The director shall execute a declaration that states the date~~
13 ~~that implementation of the copayments described in this section~~
14 ~~will commence and shall post the declaration on the department's~~
15 ~~Internet Web site and provide a copy of the declaration to the Chair~~
16 ~~of the Joint Legislative Budget Committee, the Chief Clerk of the~~
17 ~~Assembly, the Secretary of the Senate, the Office of the Legislative~~
18 ~~Counsel, and the Secretary of State.~~